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PROPAT, L.L.C. 800 Nottingham Drive Charlotte, NC 28211			JACOBSON, MICHELE LYNN	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/580,976	<b>Applicant(s)</b> FOEGLER ET AL.	
	<b>Examiner</b> Michele L. Jacobson	<b>Art Unit</b> 1782	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/21/11.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1,4,6-31,33 and 34 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1,4,6-31,33 and 34 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-832)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Examiner Notes***

1. Any objections and/or rejections made in the previous action, and not repeated below, are hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, 6-8, 10-31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose U.S. Patent No. 3,383,223 (hereafter referred to as Rose) with evidence provided by Wessling, R. A., Gibbs, D. S., Obi, B. E., Beyer, D., DeLassus, P. T. and Howell, B. A. 2002. Vinylidene Chloride Polymers. Kirk-Othmer Encyclopedia of Chemical Technology (hereafter referred to as Wessling) and Whistler, R. L. and Daniel, J. R. 2000. Starch. Kirk-Othmer Encyclopedia of Chemical Technology (hereafter referred to as Whistler).

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4. Rose teaches a cellulose casing which adheres to a dried sausage emulsion and follows the shrinkage of the sausage during curing. (Col. 2, lines 36-39) The regenerated tubular cellulose casing of Rose has an inner surface coated with a protein, such as gelatin, and a dialdehyde which is effective to insolubilize the protein coating after drying, whereby the casing shrinks with and adheres to the surface of the sausage therein. (Col. 2, lines 50-57) Paper reinforced cellulose casings such as hemp paper reinforced cellulose casings and fibrous regenerated cellulose (viscose staple) casings are disclosed to be useful for the inventive casing. (Col. 3, lines 26-27, Col. 6, lines 21-22, 45-47)

5. Useful dialdehydes include glyoxal and glutaraldehyde. (Col. 3, lines 63-65) The coating is recited to comprise 0.1-5% protein and 0.005-5.0% dialdehyde based on the weight of the casing. (Col. 3, lines 68-71) The coating solution may also comprise up to 20% glycerol to assist in plasticizing the casing and the film which is formed on the casing. (Col. 4, lines 69-72)

6. The coating solution of Rose may also further comprise starch, which as evidenced by Whistler, is a polysaccharide which comprises a linear polysaccharide component, amylose and a branched polysaccharide component, amylopectin. (Whistler, pg. 3)

7. To produce the casing disclosed a wet fibrous casing or wet unreinforced regenerated cellulose casing in a collapsed flat form is transferred from a bath in which the casing has been washed after being impregnated with viscose followed by regeneration, or in the case of regenerated cellulose casing, after regeneration (both of

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these being well known processes for the preparation of fibrous or regenerated cellulose casing) into a slack box by passage over rolls. (Col. 4, lines 48-55) A slug of coating is then placed inside the casing which is used to bubble coat the inside of the casing. (Col. 4, lines 15-19, 56-60) The coating may also be applied to the surface or surfaces of cellulosic sheets before they are formed into tubes. (Col. 7, lines 32-36)

8. The coating disclosed by Rose may also be used to coat the inside surfaces of casings whose outside surfaces are coated with saran or other polymer compositions as well as casings made from other unreinforced and fibrous type casing films comprising alginates, amylose or polyvinyl alcohol. (Col. 8, lines 14-23) As evidenced by Wessling, saran is generally understood by those of the art to mean films comprising polyvinylidene chloride. (Wessling, pg. 1)

9. The casing of Rose may also be dyed. (Col. 8, lines 5-9)

10. Regarding claims 1, 4, 6, 13, 14, 19, 20, 23, 25, 28, 30 and 34: Rose discloses a tubular food casing comprising a natural fibrous hemp paper or viscose staple reinforcement coated with a coating wherein the coating comprises a film forming gelatin protein and a glutaraldehyde or glyoxal cross linking agent. The coating of Rose is interpreted to permeate and fill the interstices of the reinforcement material as claimed in claims 1, 25, 27 and 34 since it comprises viscose staple as disclosed and claimed by applicant to be useful for the fibrous insert and is coated with the same coating by the same method as disclosed and claimed by applicant. Rose is silent regarding the reinforcement having a weight per unit area of 3 to 400 g/m<sup>2</sup>, however, since the weight per unit area of a fibrous material is related to its strength, it would

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have been obvious to one having ordinary skill in the art at the time the invention was made to have selected through routine experimentation a fibrous reinforcement material having an appropriate weight depending on the amount of strength desired for the casing. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) This obvious modification of the invention of Rose would have produced the same invention as claimed in claims 1, 4, 6, 13, 14, 19, 20, 23, 25, 28 and 30.

11. Regarding claim 7: The range of percentage by weight of the protein based on the weight of the casing of Rose overlaps with the range claimed in claim 7. In the case where the claimed ranges “overlap or lie inside ranges disclosed by the prior art” a prima facie case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990)

12. Regarding claims 8 and 10-12: The coating of Rose comprises starch, which comprises a branched polysaccharide as claimed in claims 8, 10 and 11. Since the starch composition is recited to comprise between 0.05-1% by of the coating solution, the branched polysaccharide would be present in an amount of less than 50% by weight of the dry casing, which overlaps with the range of natural polymer claimed in claim 12.

13. Regarding claims 15 and 16: Rose discloses that the inventive casing may be dyed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have selected an appropriate amount of dye to utilize in the casing of Rose depending on the intensity of the color desired for the resulting casing.

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This obvious modification of the invention of Rose through routine experimentation would have produced the same invention as claimed in claims 15 and 16.

14. Regarding claims 17 and 18: Rose discloses that the inventive casing may also comprise a coating of polyvinylidene chloride.

15. Regarding claims 21 and 22: Rose discloses the casing production methods claimed in claims 21 and 22.

16. Regarding claim 24: Claim 24 merely recites an intended use for the claimed casing. Applicants attention is drawn to MPEP 2111.02 which states that intended use statements must be evaluated to determine whether the intended use results in a structural difference between the claimed invention and the prior art. Only if such structural difference exists, does the recitation serve to limit the claim. If the prior art structure is capable of performing the intended use, then it meets the claim.

17. It is the examiner's position that the intended use recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art and further that the prior art structure is capable of performing the intended use. Given that Rose discloses a sausage casing as presently claimed, it is clear that the sausage casing of Rose would be capable of performing the intended use, i.e. being used in shirred form as a shirred stick or in the form of individual sections, the individual sections being closed at one end by a metal or plastic clip, by tying with yarn or by sewing, presently claimed as required in the above cited portion of the MPEP.

18. Regarding claim 26: The aqueous coating composition of Rose is disclosed to comprise only protein and crosslinking agent. Once the coating is dried, the coating

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only comprises protein and crosslinking agent. Since the ratio of protein to crosslinking agent in the coating ranges from 1000:1 to 1:1 the ratio of protein to crosslinking agent in the dried coating can range from 1000:1 to 1:1. This range of percentages encompasses the range claimed in claim 26. In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990)

19. Regarding claims 27 and 31: It would have been obvious to one having ordinary skill in the art at the time the invention was made to have selected an appropriate weight per unit area for the reinforcing layer and an appropriate coating weight for the casing of Rose depending on the thickness of the casing desired. This obvious modification of Rose through routine experimentation would have produced a casing with a weight per unit area as claimed in claims 27 and 31. It is well known in the sausage casing art to provide porosity or barrier layers depending on the amount of permeability desired for a sausage casing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have varied the permeability of the sausage casing of Rose by providing porosity or a barrier layer to the casing of Rose depending on the amount of vapor permeability desired. Such an obvious modification would have produced the same water vapor permeability as claimed in claim 27 or water permeability as claimed in claim 31.

20. Regarding claim 29: The reinforcement layer of Rose is interpreted to be "self-supporting" as claimed in claim 29 since it is able to provide support to the casing



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disclosed. Claim 1 recites that the coating composition “permeates the reinforcement” and therefore, the recitation that the “coating is applied to only an outside surface of said reinforcement” is interpreted to be a product by process limitation because no matter what side of the casing the coating is applied, the coating “permeates” the reinforcement meaning it may penetrate throughout the reinforcement material.

Although Rose does not disclose coating only the outside of the reinforcement, it is noted that “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process”, *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) Further, “although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product”, *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

21. Therefore, absent evidence of criticality regarding the presently claimed coating process and given that the casing of Rose meets the requirements of the claimed composite, Rose obviates the requirements of present claim 29.

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22. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rose U.S. Patent No. 3,383,223 (hereafter referred to as Rose) with evidence provided by Wessling, R. A., Gibbs, D. S., Obi, B. E., Beyer, D., DeLassus, P. T. and Howell, B. A. 2002. Vinylidene Chloride Polymers. Kirk-Othmer Encyclopedia of Chemical Technology (hereafter referred to as Wessling) and Whistler, R. L. and Daniel, J. R. 2000. Starch. Kirk-Othmer Encyclopedia of Chemical Technology (hereafter referred to as Whistler) as applied to claims 1 and 8 above in further view of Gord et al. U.S. Patent Application Publication No. 2002/0064580 (hereafter referred to as Gord).
23. Rose teaches what has been recited above but is silent regarding the addition of polyvinyl acetate or polyacrylate.
24. Gord teaches a cellulose fiber based sausage casing coated with a solution comprising a protein such as gelatin and other additives. (Para. 18, 19) Polyvinyl acetate and polyacrylate are recited to be useful additives for the protein solution because they impart higher smoke permeability to the casing. (Para. 21)
25. Rose and Gord are all directed towards sausage casings comprising cellulose fiber coated with a solution comprising a protein such as gelatin. One of ordinary skill would have been motivated to utilize polyvinyl acetate or polyacrylate as an additional additive in the coating necessary for the invention of Rose in order to impart higher smoke permeability to the casing. The obvious modification of the invention of Rose in order to increase the smoke permeability of the casing would have produced the invention claimed in claim 9.

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26. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rose U.S. Patent No. 3,383,223 (hereafter referred to as Rose) with evidence provided by Wessling, R. A., Gibbs, D. S., Obi, B. E., Beyer, D., DeLassus, P. T. and Howell, B. A. 2002. Vinylidene Chloride Polymers. Kirk-Othmer Encyclopedia of Chemical Technology (hereafter referred to as Wessling) and Whistler, R. L. and Daniel, J. R. 2000. Starch. Kirk-Othmer Encyclopedia of Chemical Technology (hereafter referred to as Whistler) as applied to claims 1 and 8 above in further view of Yasue U.S. Patent No. 6,545,082 (hereafter referred to as Yasue).

27. Rose teaches what is recited above but is silent regarding the water soluble proteins disclosed including collagen. Rose also teaches that useful soluble proteins for the invention include but are not limited to albumins, globulins, glutelins, proalamines, prolines, hydroxyprolines, histones, elastins, protamines, egg albumin, edestin, glutenin, procollagen, gelatin and gliadin. (Col. 3, lines 55-60)

28. Yasue teaches a water soluble coating composition comprising soluble proteins such as whey, egg white (albumin), silk, collagen, casein, gelatin, sericin and serum protein. (Claim 8)

29. Both Rose and Yasue recite aqueous coatings comprising water soluble proteins such as gelatin and egg albumin. Yasue evidences that collagen was known in the art to be a suitable protein for water soluble protein coating compositions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have selected collagen as the water soluble protein in the coating composition of Rose since these materials were known in the art to be suitable proteins for aqueous

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coating compositions. The selection of a known material based on its suitability for its intended use supports a *prima facie* obviousness determination. ("Reading a list and selecting a known compound to meet known requirements is no more ingenious than selecting the last piece to put in the last opening in a jig-saw puzzle." *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious)) (MPEP 2144.07) This obvious selection of collagen for the protein in Rose based on its suitability for protein coating compositions would have produced the same invention as claimed in claim 33.

### ***Response to Arguments***

30. Applicant's arguments filed 12/21/11 have been fully considered but they are not persuasive.

31. Applicant asserts on pages 11 and 12 of the remarks that Rose is directed to only cellulose coated fibrous casings and therefore cannot obviate the claimed fibrous reinforcement because the protein coating would be incapable of permeating the reinforcement and filling the interstices therein. However, this interpretation of Rose does not acknowledge the viscose staple (i.e. regenerated cellulose) reinforcement

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coated with the protein coating of Rose. As clearly disclosed in applicant's specification and in claim 28, which depends from claim 1, viscose staple is a fibrous support web which falls within the scope of the reinforcements recited in independent claims 1, 25, 27 and 34. Since the fibrous support web of Rose is coated by the same method disclosed to be useful by applicant and comprises the same material recited to be useful by applicant, clearly, the viscose staple fibrous support of Rose must necessarily be permeated by the protein coating of Rose. As such, the addition of the limitation regarding the protein coating permeating and filling interstices is not sufficient to distinguish the claimed invention from the prior art.

32. The conclusory statements on pages 12, 14, 16, 17 and 18 of the remarks regarding claimed features applicant asserts the modification of Rose does not teach are not found persuasive as these statements fail to address any of the motivations for modifying Rose, reasoning provided by the examiner or any of the merits of the rejection set forth above. Absent any substantive arguments identifying deficiencies in the rejection presented by the examiner, it is the examiner's position that the modification of Rose presented above does indeed teach all of the features of the claimed invention.

33. Applicant's remarks regarding Wessling and Whistler are not germane to the rejection above as these references were merely relied on to provide evidence of the meanings of terms in Rose.

34. In response to applicant's arguments against the references individually on pages 15 and 17 of the remarks, one cannot show nonobviousness by attacking

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references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele L. Jacobson whose telephone number is

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(571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-6 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele L Jacobson/  
Primary Examiner, Art Unit 1782

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